

COMMISSIONERS' APPROVAL

CHILCOTT

LUND *BL*

THOMPSON *AT*

TAYLOR (Clerk & Recorder)

Date.....April 17, 2006

Members Present.....Commissioner Greg Chilcott, Commissioner Betty Lund and Commissioner Alan Thompson

Minutes: Glenda Wiles

The Board met for various administrative matters that included the following:

Commissioner Thompson made a motion to adopt the following budget transfers:

- Resolution No. 1846 for Fiscal Year 2006 in the Planning Office for \$1,000
- Resolution No. 1847 for Fiscal Year 2006 in the Treasurers Office for \$3,000
- Resolution No. 1848 for Fiscal Year 2006 for GIS Fund in the amount of \$33,413.00
- Resolution No. 1849 for Fiscal Year 2006 in the Weed Department for \$200
- Resolution No. 1850 for Fiscal Year 2006 in the Planning Office for \$1,000
- Resolution No. 1851 for Fiscal Year 2006 in the Treasurers Office for \$650.00
- Resolution No. 1852 for Fiscal Year 2006 in the Maintenance Department for \$200.00

Commissioner Lund seconded the motion and all voted "aye".

Commissioner Chilcott was not present for this vote.

Commissioner Thompson made a motion to execute the 10-year lease for Hangar W-12 with Roman Malvehy. Commissioner Lund seconded the motion and all voted "aye".

Commissioner Thompson made a motion to release the funds held on the Walker property for DEQ compliance. Commissioner Lund seconded the motion and all voted "aye".

The Public Health Nurses' Office presented paper work to extend the warranty on a 2003 vehicle they purchased. Discussion included the current mileage of 31,000 and the request to pay \$1,500.00 for an additional 30,000 miles or 36 months. Commissioner Lund made a motion to decline the extended warranty for the 2003 Chevy Malibu. Commissioner Thompson seconded the motion and all voted "aye".

The Board reviewed the request by Judge Haynes of the 21st Judicial Court to send Deputy Mark Twist to a Courtroom Security and Transportation Issues on April 26 & 27th in Helena. Judge Haynes had indicated to Glenda he planned on paying for the

transportation/lodging and meals but the State has indicated it is the county's responsibility to send this Deputy. Discussion included the fact that the State (Montana Department of Justice) completed the statewide courtroom security survey and is presenting this training with the Montana Sheriffs and Peace Officers Association and United States Marshals Office. The Board concurred the Sheriff should be the responsible party to send the Deputy for courtroom security issues.

The Board discussed the request by the Board of Health and Health Officer in regard to making sure there is no mold in the area of the Public Health Office and WIC Office due to the recent roof leak. Glenda will contact Environmental Health Director Theresa Blazicevich and have her coordinate the inspection by an Industrial Hygienist.

In other business the Board met with Clerk and Recorder Nedra Taylor and Deputy Clerk and Recorder Tena Miller for an update in the office and discussion of upcoming election needs.

Commissioner Lund made a motion to approve of the sales order agreement to Election Services in the amount of \$160,900.00 for the M-100 voting machines. Commissioner Thompson seconded the motion and all voted "aye".

Jim Morton of the Human Resource Council met with the Commissioners to discuss the Montana Department of Commerce HOME Program, which is a pilot program to allocate a portion of Montana's 2006 HOME funds on a statewide basis to conduct homebuyer assistance and homeowner rehabilitation programs. This pilot program represents a change in how funds are allocated and is an attempt by the State to more strategically disburse HOME funds. Ravalli County is part of the District XI service area which includes Mineral and Missoula Counties. The initial annual allocation amount for the district is \$163,232.00. The new system requires a one-time application to become the qualified provider for its service district. Jim indicated the Human Resource Council is submitting an application to continue to be the provider of homebuyer assistance and homeowner rehabilitation services in the three counties. The programs also require the County's support through the certification of the environmental reviews that the Human Resource Council conducts for the properties in the County that receive program financing. The Board agreed to submit a letter of support to the Human Resource Council to become the qualified provider of the homebuyer assistance and homeowner rehabilitation services in Ravalli, Missoula, and Mineral Counties through the HOME Pilot Program.

In other business the Board met with Dale Brown and Jake Kammerer of Kammerer Consulting in regard to a parcel of land he purchased in Florence so he could build a home for himself on a portion of the lot. Also present at this meeting was Civil Counsel James McCubbin and Interim Planning Director Karen Hughes. Jake presented some background on this project that began in 2002, in regard to Environmental Health issues, and flood plain issues. Jake stated the property was surveyed by Steve Powell and Environmental Health noted a deficiency in the survey. This deficiency, according to Environmental Health, showed the property was located within the flood plain, as determined by the previous flood plain administrator Patricia Hill. Jake also noted the previous Environmental Health Director and certified flood plain administrator, Todd

Klietz noted a LOMA map for flood plain was not required. Jake stated Patricia wrote a letter addressing an issue of scale by three different survey/studies. Jake stated he provided a lot lay out on the 100-year elevational issue.

Now present was Flood Plain Administrator Laura Hendrix.

Dale stated there is a modular that is UBC certified on a foundation located on this property. It is not a trailer.

Jake stated after a considerable time, Patricia determined there were no flood plain issues, but by that time, Civil Counsel and Planning Director Patrick O'Herren came out with the opinion that this would be a subdivision for lease or rent and that Mr. Brown needed to move forward to subdivide this property. Jake stated this started out to be a simple process, but now it is within subdivision review, which requires several thousand dollars for the roads. This was in a pre- 1973 subdivision, and in August 2006, Jake indicated he advised Mr. Brown he should be able to apply for the subdivision exemption. On September 14th the application was submitted. Jake stated four of his clients; Theresa Manzella was approved in a pre- 1973 subdivision. Jake stated Dale should fall into this same category. Patrick advised Mr. Brown to save himself the \$200.00 on the subdivision exemption and withdraw the application. So Mr. Brown withdrew his application. However, as noted above, Theresa Manzella's application was ultimately approved. Jake stated they have written letters to George Corn and have not received any response. He stated they did not find out George had made a determination on March 16th until another meeting with the Planning and Clerk and Recorder's Offices for another subdivision exemption application.

James asked Jake if the practice was not to allow the exemptions in the tracts. Jake stated he knew it was a practice but the facts are they have been filed and he does not know when the policy was changed. James stated if this is a long standing practice, and we now know what his opinion is; as it does not matter whether the change was made by policy or by error. Commissioner Chilcott stated the only issue is Dale's property. He stated he does not care what happened in 1976. Rather he is interested in the flood plain issue on this particular parcel and what representations were made by Ravalli County.

Dale stated next door to this property is a parcel of land that was allowed to be split by the exemption process. Commissioner Chilcott stated if the flood plain issue is resolved, then they need to focus on that time frame forward. He stated it is difficult to make any assumptions from the earlier time.

James stated he does not believe there was ever representation by the county that Mr. Brown could have an exemption. He stated he does not see any promises being made. He also stated the county needs to follow the law and the best interpretation is that they can not allow an exemption by properties that are within a platted subdivision, unless there is a compelling exception for not following the law, like an equitable estoppel, which was a finding that allowed the party to meet the requirements. Jake stated Patrick told Dale he could apply for and receive approval. James stated under those circumstances if hat promise was made and the party moved forward and spent money, then they have a compelling exception for not following the procedures.

Commissioner Thompson stated the county delayed this issue and it seems as though the county has 'screwed up' and the applicant has continued to do what has been asked of him. If Mr. Brown continued to follow the requirement such as DEQ and ground water monitoring, and surveying the property, which he did, then he should be allowed to move forward with his exemption approval. Commissioner Thompson stated those requirements were not in effect in 2002 and he certainly understands Mr. Brown's frustration. James stated the law did not change in 2002. Rather the county was not following the law. He stated he has correspondence as early as 1999 that did not allow a subdivision for lease or rent issue. James stated if you have certain findings on Mr. Brown's issue, then move forward with an equitable estoppel and allow him the exemption.

Commissioner Thompson asked Mr. Brown if he had a face to face with Patrick O'Herren and received approval for this subdivision exemption approval. Dale stated he met with Patrick at the counter in Planning and Patrick told him he should have gone through the subdivision process and not the family transfer process. He did not tell Mr. Brown that he should go through the family transfer. Jake stated Mr. Brown told him he could go through the exemption process. Mr. Brown stated he remembered Patrick telling him he should go through the subdivision process. Jake stated they need to contact Patrick and see what representations were made.

A member of the audience Soozie Knapp stated she is also going through the subdivision exemption process and there were representations made by the county that allowed exemption for several months. She stated there are several applicants that were given this type of representation.

Jake stated he visited with Nan, the previous Planning Secretary and she advised him she could remember being told by Karen and Patrick that they could accept the subdivision exemption applications.

Commissioner Lund asked James when he submitted a memo to say those exemptions could be done. James noted it was October 19, 2004. Then the second memo came out July 2005, which put the hold on the subdivision exemptions on parcels in previously platted subdivisions, until George rendered a decision. Commissioner Lund noted Mr. Brown's issue was long before the summer of 2005 when the hold was put on the subdivision exemptions. She stated there seems to be several exemption applications that are caught in this time frame. Jake stated Mr. Brown has been very patient and the policy & interpretations have changed along with the numerous personnel. Due to the time lines and personnel changes there are several, such as Mr. Brown that has been hung up in the process.

James stated one way to allow two structures on this parcel is to do a duplex. Jake stated one son already has the house built. Mr. Brown stated he is not going to sell the property. Commissioner Chilcott stated some day the property will be sold when the Brown family does not live there. Commissioner Chilcott stated the issue for him is to see if representation was made to either Mr. Brown or his consultant that an exemption could be done. Mr. Brown stated this was discussed when the water monitoring was done by

Dan Hooten. He also received that information by Theresa Blazicevich. That is why he hired a consultant and they moved forward.

Commissioner Lund stated between Oct. 2004 and Aug. 2005 the word was out that that a subdivision exemption could be done within a subdivision. To her that is the issue of Mr. Brown's dilemma.

A DEQ approval letter was presented which shows the state making representations of a state statute of certain properties for conditions of approval on two single-family dwellings. He stated the State is making representations that actually bind the county.

Commissioner Thompson asked if they should allow this exemption. Nedra stated she will want a letter from the Commissioners advising her to allow this exemption.

James read the six elements of estoppel:

- 1) Existence of conduct constituting representing or concealing of fact.
- 2) A fact must be known to the county or the circumstances of the fact were given to the party.
- 3) The truth must have been unknown to the party
- 4) It must be known that it the context will be acted upon
- 5) The conduct must be relied upon by the party and they acted upon it.
- 6) The other party must have acted upon it to change for the worse (based on representation).

Jake stated he told Mr. Brown he would not do the subdivision application but he would do the DEQ application and exemption application 'which is what they did based upon what they were told to do'. The only reason they pulled the application was because Patrick told them to do.

Commissioner Chilcott stated the representation did not change his course to his detriment. Jake stated it is to his detriment because he can not have it. Commissioner Lund stated it is to his detriment. She stated she can see all six of the facts for the estoppel.

Nedra stated Mr. Brown's exemption application was not sent in until September 2005. Jake stated if you read the email, it does not read that it is a negative. Commissioner Lund stated in Dec 2002, Dan addressed the two houses. Commissioner Chilcott asked Nedra for her recommendation. Nedra stated she has no recommendation, but will need an oral or written representation by the Commissioners if they want to allow the exemption.

Commissioner Chilcott noted in Jake's letter the representation was made, and where did Jake learn it? She wants something in writing to allow her to break the law.

Soozi stated the representations were made but how do the employees remember. She stated her family remembers their specific representations but how could the employees remember? James stated the estoppel must be established by clear facts, not just a preponderance of evidence.

Commissioner Chilcott stated that comment 'changes the bar a little bit'. He asked; specific to this property, did someone from the County make a representation to you that a family transfer would work? Jake stated with his and Jeans discussion, which included Nan, Karen and Patrick, we told our clients to submit their application fees and application for this exemption. We only told three of our clients to do this. One of these three was approved, one is going through subdivision process because they did not want to wait and Mr. Brown is the other one. The timeliness is the problem, and yes representations were made to him and we moved forward in this process. He stated he remembers talking to Patrick, and that is why they moved forward.

Nedra asked if they could approve a second structure with a covenant and if the property ever transfers to another party, they will need to do a subdivision. James stated that is difficult. Commissioner Chilcott stated before the Board takes any remedy, they need a finding of fact on this other issue.

Commissioner Chilcott also stated the email shows they were taking a gamble on the exemption application. Commissioner Lund stated Jake 'saw a window to utilize the exemption application' instead of having two houses on one lot.

Commissioner Thompson stated he is frustrated by this whole process. He stated Mr. Brown wants to give his son a piece of land and it seems as though the preponderance of evidence that shows the County was moving forward on this but we kept changing the rules by requiring flood plain mapping two times, DEQ approval etc. and had an expedited review happened we would not be sitting her in 2006. Commissioner Chilcott stated if they would have supplied this in 2004, the exemption would probably have been approved. Commissioner Chilcott stated the Sanitarian made representations, the DEQ made representations to allow a second structure and the citizens are seeing a hierarchy of the representations.

The Board then reviewed the elements of the Equitable Estoppel:

- 1) Concealment of fact: Commissioner Chilcott noted even the State made a representation consistent with the Sanitarian. The Board concurred.
- 2) Facts must be known: Commissioner Lund noted the issues were addressed from Environmental Health to the Planning office and the State. The Board concurred.
- 3) Truth to the party: Commissioner Lund and Commissioner Thompson that is clear to them. Commissioner Chilcott stated the debate is that the submission was in September 2005. Commissioner Lund stated this started in 2002 and Theresa signed the approval for two houses on one lot. James stated the Supreme Court recently upheld that if you make a legal representation it is not a factual representation and factual representations are subject to the estoppel. This was a January case with a school district.

The Board took a break from this issue to make an award of the herbicide bids that were received last week. Weed Coordinator Bryce Christiaens presented a recommendation to award the herbicide bid to Mountain West Cooperative. Commissioner Thompson made a motion to award the bid to Mountain West Cooperative. Commissioner Lund seconded the motion and all voted "aye".

The Board reconvened on the Dale Brown issue. It was noted the Board can make a preliminary finding if the estoppel can be made and if so, they can run their decision by the County Attorney. Commissioner Chilcott stated all of the elements raised here today are based on representations of law, not by representations of fact.

Dale stated this Supreme Court opinion comes up now and he is stuck with this while no one else has been. Jake stated if that is the case, Mr. Brown now needs an attorney.

Commissioner Thompson stated under what James is saying, there is no such thing as the county ever admitting they can make a mistake. He stated that 'does not jive' for him and the Commissioners need to follow common sense. Commissioner Lund stated in her court case with Steve Green, the Supreme Court ruled that she had given Steve the wrong date; thus she could place his name on the ballot. Commissioner Thompson summed this issue up by saying this is a situation that the county gave some information the person relied upon and the Supreme Court says that is not the county's problem.

In regard to the third element of the estoppel, Commissioner Lund believes Mr. Brown was moving forward on the information he had, which made him think that he could because it was reliable information. Commissioner Chilcott agreed and noted even the State 'jumped in', thus Mr. Brown thought he had reliable information.

#4) The conduct must be done and acted upon by the other party: Commissioner Lund stated the subdivision for lease or rent issue was not implemented in 2002, and in 2005 the pre-1973 divisions of land were not considered subdivisions because of a memo from James. Commissioner Chilcott indicated with Karen's email, the application was timely. There was representation that this application may or may not hold up. Nedra also presented a withdrawal of this application in October of 2005. Jake stated the withdrawal of the application was due to Patrick's suggestion that Mr. Brown withdraw it because George Corn had not reviewed this information at this time. Commissioner Chilcott stated in his opinion this email at least dilutes the representation before the application so he can only consider the common knowledge of the citizens, and during this portion of time the exemptions were allowed. Commissioner Thompson and Commissioner Lund agreed.

#5) Conducts must be relied upon by other party: Commissioner Lund stated she relied upon it enough to obtain DEQ approval. James asked if they are consistently utilizing the exemption application or the 'for lease or rent issue'. He stated it is important to pick one representation and use all of the estoppel criteria. Commissioner Lund commented that the County 'made the moving target; Mr. Brown did not'. Commissioner Chilcott stated James is right we can not apply the subdivision and platting act on criterion 1-3 and then use the 'subdivision for lease or rent' issue on criterion #4 and #5. Commissioner Thompson stated the Board needs to be consistent. One parcel with one house is all of the information they have before them at this time.

In reviewing two houses on one lot for the criterion, the Board discussed the following:

#1 Criterion: Commissioner Lund stated the applicant paid the money and the site evaluation was done. The State sent him a letter allowing him to put two houses on one lot. Commissioner Chilcott and Thompson concurred.

#2 Criteria: Commissioner Chilcott stated Sanitarian Dan Hooten knew of this and was actually ground water monitoring a second dwelling. The Board concurred.

#3 Criteria: The Board concurred that Mr. Brown would not have known about the subdivision for rent or lease issue.

#4 Criteria: The County represented that it (the application) would be acted upon by Mr. Brown. Commissioner Lund stated Mr. Brown acted on it relying on the County for the second home. Commissioners Thompson and Chilcott concurred.

#5 Criteria: Mr. Brown acted based upon the County's action. The Board concurred.

#6 Criteria: In so relying on the County, Mr. Brown changed his opinion for the worse and spent money. Commissioner Lund stated that is where Mr. Brown 'changed horses'. Commissioner Chilcott stated he spent money and used Surveyor Steve Powell to show it was out of the flood plain. The Board concurred.

James asked if this was this factual or legal in nature. Jake stated this is factual. Commissioner Lund stated the legal interpretation had not come yet, so it is factual. Commissioner Chilcott stated he could not think of one fact that was not based on the legal aspect. Commissioner Thompson stated the fact is that the State sent him a letter. Commissioner Chilcott noted the facts are not in question. James stated he needs to run this by George before he makes a recommendation to the Board on this issue.

Jake asked if Patrick and Karen and the County Attorney make a recommendation, is it reasonable to assume that would be the interpretation that the County Attorney would take based on the fact that it as factually researched. He asked if they thought the County Attorney will have a different opinion.

Mr. Brown felt he could obtain a family transfer. James stated he did mostly legal research not factual research.

Due to the lateness of the hour it was agreed to continue this meeting until May 8th.

Commissioner Lund made a motion to continue this meeting until May 8th.

Commissioner Thompson seconded the motion. All voted "aye".